
STATUTORY INSTRUMENTS

1996 No. 1461

PENSIONS

The Protected Rights (Transfer Payment) Regulations 1996

<i>Made</i>	- - - -	<i>5th June 1996</i>
<i>Laid before Parliament</i>		<i>11th June 1996</i>
<i>Coming into force</i>	- -	<i>6th April 1997</i>

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 28(2)(b), 181(1)(1), 182(2) and (3) of, and paragraph 17(1) of Schedule 6 to, the Pension Schemes Act 1993(2) and of all other powers enabling him in that behalf, after agreement with the Occupational Pensions Board that certain proposals within these Regulations need not be referred to them, by this instrument, which otherwise contains regulations made only for the purpose of consolidating Regulations revoked herein(3), hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Protected Rights (Transfer Payment) Regulations 1996 and shall come into force on 6th April 1997.

(2) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993;

“the Abatement of Benefit Regulations” means the Personal and Occupational Pension Schemes (Abatement of Benefit) Regulations 1987(4);

“appropriate personal pension scheme” shall be construed in accordance with section 7 of the 1993 Act(5);

“money purchase contracted-out scheme” means an occupational pension scheme which is contracted-out by virtue of satisfying section 9(3) of the 1993 Act(6);

“overseas scheme” means an occupational pension scheme which is administered wholly or primarily outside the United Kingdom but does not include one which is contracted-out within

(1) Section 181(1) is cited because of the meaning there given to the words “prescribed” and “regulations”.

(2) 1993 c. 48.

(3) See section 185(2) and (6) of the Pension Schemes Act 1993 and section 173(1) of the Social Security Administration Act 1992 (c. 5), under which the requirement to consult does not apply where regulations are made only for the purpose of consolidating other regulations revoked by them or where the Occupational Pensions Board agrees that regulations need not be referred to them.

(4) S.I. 1987/1113. The relevant amending instrument is S.I. 1994/1062.

(5) Section 7 was amended by section 136(1) of and paragraph 22 of Schedule 5 to the Pensions Act 1995.

(6) Section 9(3) was amended by section 136(4) of and paragraph 24 of Schedule 5 to the Pensions Act 1995.

the meaning of section 7(3) of the 1993 Act nor one in respect of which section 53 of the 1993 Act(7) applies;

“post-97 protected rights” means—

- (a) protected rights which are attributable to payments or contributions in respect of employment carried on on or after the principal appointed day; and
- (b) protected rights which derive from section 9(2B) rights which have been the subject of a transfer payment;

“pre-97 protected rights” means—

- (a) protected rights which are attributable to payments or contributions in respect of employment carried on before the principal appointed day; and
- (b) protected rights which derive from guaranteed minimum pensions which have been the subject of a transfer payment;

“the principal appointed day” has the meaning given to that expression by section 7(2B) of the 1993 Act(8);

“protected rights” has the meaning given to that expression by section 10 of the 1993 Act(9);

“salary-related contracted-out scheme” means an occupational pension scheme which is contracted-out by virtue of satisfying section 9(2) of the 1993 Act(10);

“scheme” means an occupational pension scheme or a personal pension scheme;

“section 9(2B) rights” are—

- (a) rights (other than rights attributable to voluntary contributions within the meaning of section 111 of the 1993 Act) which are attributable to an earner’s service on or after the principal appointed day in employment which is contracted-out in accordance with section 9(2B) of the 1993 Act(11); and
- (b) where a transfer payment has been made to a salary-related scheme in respect of rights mentioned in paragraph (a) or of post-97 protected rights, any rights arising under that scheme as a consequence of that payment, or, where only part of it was made in respect of such rights, of that part of it;

“trustees”, in relation to a scheme which is not set up or established under a trust, means the managers of the scheme.

General

2. A money purchase contracted-out scheme or an appropriate personal pension scheme (or a scheme which was formerly a money purchase contracted-out scheme or an appropriate personal pension scheme) may give effect to the protected rights of a member by the making of a transfer payment—

- (a) to an appropriate personal pension scheme; or
- (b) to an occupational pension scheme

in accordance with regulations 3 to 5 and in these Regulations a “transfer payment” means a transfer payment such as is described in this regulation.

(7) Section 53 was amended by paragraph 48 of Schedule 5 to the Pensions Act 1995.

(8) Section 7(2B) was inserted by section 136(1) of the Pensions Act 1995.

(9) Section 10 was amended by paragraph 25 of Schedule 5 to the Pensions Act 1995.

(10) Section 9(2) was amended by section 136(3) of the Pensions Act 1995.

(11) Section 9(2B) was inserted by section 136(3) of the Pensions Act 1995.

Transfer payments to money purchase contracted-out schemes and appropriate personal pension schemes

3. A transfer payment may be made to a money purchase contracted-out scheme or an appropriate personal pension scheme if—

- (a) the member consents in writing;
- (b) the transfer payment (or, if it forms part of a larger payment giving effect to both protected and other rights, that part of it which gives effect to protected rights) is of an amount at least equal to the cash equivalent of the protected rights to which effect is being given, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act⁽¹²⁾ (calculation of cash equivalents);
- (c) in the case of a transfer payment to a money purchase contracted-out scheme, the member—
 - (i) is employed by an employer who is a contributor to the receiving scheme, or
 - (ii) has previously been a member of the receiving scheme; and
- (d) the transfer payment is applied so as to provide money purchase benefits under the receiving scheme for or in respect of the member.

Transfer payments to salary-related contracted-out schemes

4. A transfer payment may be made to a salary-related contracted-out scheme if—

- (a) the member consents in writing;
- (b) the transfer payment (or, if it forms part of a larger payment giving effect to both protected and other rights, that part of it which gives effect to protected rights) is of an amount at least equal to the cash equivalent of the protected rights to which effect is being given, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act;
- (c) the member—
 - (i) is employed by an employer who is a contributor to the receiving scheme, or
 - (ii) has previously been a member of the receiving scheme;
- (d) where the transfer payment or any part of it gives effect to pre-97 protected rights, the receiving scheme, in consequence of that payment (or, where only part of it gives effect to such rights, of that part) provides for
 - the member, and
 - the member's widow or widowerto be entitled, without prejudice to any other rights which the member receives under that scheme, to guaranteed minimum pensions equal to those to which they would have been treated as entitled by virtue of
 - section 47(2) or (5) of the 1993 Act (further provisions concerning entitlement to guaranteed minimum pensions for the purposes of section 46), or
 - section 48(2) of the 1993 Act⁽¹³⁾ (reduced benefits where minimum payments or minimum contributions paid)

had the transfer payment not been made, except that the receiving scheme may make provision that any earnings factor of the member is to be revalued in accordance with

⁽¹²⁾ Section 97 was amended by paragraph 4 of Schedule 6 to the Pensions Act 1995.

⁽¹³⁾ Section 48(2) was amended by paragraph 58 of Schedule 1 to the Social Security Incapacity for Work Act 1994 (c. 18) and section 140(2) of the Pensions Act 1995.

section 16(2) of the 1993 Act (revaluation of earnings factors for purposes of section 14: early leavers etc.), as modified by regulation 6; and

- (e) where the transfer payment or any part of it gives effect to post-97 protected rights, the transfer payment (or, where only part of it gives effect to post-97 protected rights, that part) is applied to provide rights for the member which, had they accrued in the receiving scheme, would be provided in accordance with the rules of the receiving scheme relating to earners who are in employment which is contracted-out in relation to the receiving scheme or have been in employment which was so contracted-out.

Transfer payments to overseas schemes

- 5. A transfer payment may be made to an overseas scheme if—
 - (a) the member consents in writing;
 - (b) the trustees of the transferring scheme have taken reasonable steps to satisfy themselves that the member has emigrated on a permanent basis and has entered employment to which the receiving scheme applies;
 - (c) the transfer payment (or, if it forms part of a larger payment giving effect to both protected and other rights, that part which gives effect to protected rights) is of an amount at least equal to the cash equivalent of the protected rights to which effect is being given, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act;
 - (d) the member has acknowledged in writing that he accepts that the scheme to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or its trustees to provide any particular value or benefit in return for the transfer payment; and
 - (e) the trustees of the transferring scheme have taken reasonable steps to satisfy themselves that the member has received a statement from the receiving scheme showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld.

Modifications of Part III of the 1993 Act where transfer payments are made to salary-related contracted-out schemes

6.—(1) Where a transfer payment has been made to a salary-related contracted-out scheme in accordance with regulation 4 (or with regulations 2 and 3 of the Protected Rights (Transfer Payment) Regulations 1987⁽¹⁴⁾) the 1993 Act shall have effect as modified by this regulation.

- (2) The definition of “guaranteed minimum pension” in section 8(2)⁽¹⁵⁾ shall have effect as if—
 - (a) after “sections 13 and 17” there were inserted “or in compliance with the requirement set out in regulation 4(d) of the Protected Rights (Transfer Payment) Regulations 1996 (or, as the case may be, with the requirement set out in paragraph 2 of Schedule 3 to the Protected Rights (Transfer Payment) Regulations 1987)”; and
 - (b) at the end there were added “or, as the case may be, of that requirement”.

(3) Section 47(2)(b) (further provisions concerning entitlement to guaranteed minimum pensions for the purposes of section 46) shall have effect as if after paragraph (ii) there were added “unless he is entitled to that guaranteed minimum pension by reason of regulation 4(d) of the Protected

⁽¹⁴⁾ S.I. 1987/1118, amended by S.I. 1994/1062 and S.I. 1994/1751.

⁽¹⁵⁾ Section 8 was amended by section 136(2) of and paragraph 23 of Schedule 5 to the Pensions Act 1995.

Rights (Transfer Payment) Regulations 1996 (or of paragraph 2 of Schedule 3 to the Protected Rights (Transfer Payment) Regulations 1987).”.

- (4) Section 14(1)(16) (earner’s guaranteed minimum) shall have effect as if—
- (a) after “guaranteed minimum” there were inserted “both”; and
 - (b) at the end there were added “and in relation to any pension provided by a scheme in compliance with the requirement set out in regulation 4(d) of the Protected Rights (Transfer Payment) Regulations 1996 (or, as the case may be, with the requirement set out in paragraph 2 of Schedule 3 to the Protected Rights (Transfer Payment) Regulations 1987)”.
- (5) In a case to which regulation 2(1) of the Abatement of Benefit Regulations applies, section 16(1) (revaluation of earnings factors for purposes of section 14: early leavers etc.) shall have effect as if any earnings factor to which regulation 2(2)(b) of those Regulations applies were, before being increased as mentioned in section 16(1), equal to the amount mentioned in regulation 2(2)(b) of those Regulations.
- (6) Section 16(2) shall have effect—
- (a) if the scheme from which the transfer payment was made was a personal pension scheme, in respect only of each relevant year after the year in which minimum contributions, within the meaning given to that expression in section 181(1) (general interpretation), were last payable; and
 - (b) if the scheme from which the transfer payment was made was, or had formerly been, a money purchase contracted-out scheme, in respect only of each relevant year after the year in which contracted-out employment by reference to that scheme terminated.

Revocations and transitional provisions

7.—(1) Subject to paragraphs (2) and (3) and to Schedule 2, the regulations listed in column 2 of Schedule 1 (some of which are spent) are revoked to the extent specified in column 3 of Schedule 1.

(2) Where a transfer payment has been made to a salary-related contracted-out scheme in accordance with regulations 2 and 3 of the Protected Rights (Transfer Payment) Regulations 1987, then regulation 4(8) and (9) of those Regulations (as in force immediately before these Regulations came into force) shall continue to have effect in relation to any state scheme premium which has been paid before the principal appointed day or is payable immediately before that day.

(3) Where an application under section 95 of the 1993 Act (ways of taking right to cash equivalent) has been made before the principal appointed day, for the purposes of dealing with that application regulations 2 to 5 of these Regulations shall not apply and regulations 1 to 3 of the Protected Rights (Transfer Payment) Regulations 1987 (as in force immediately before these Regulations came into force) shall continue to apply subject to the modifications set out in Schedule 2.

Signed by authority of the Secretary of State for Social Security.

5th June 1996

Oliver Heald
Parliamentary Under-Secretary of State,
Department of Social Security

SCHEDULE 1

Regulation 7

REVOCATIONS

Column 1 Statutory Instrument Number	Column 2 Statutory Instrument	Column 3 Provision revoked
S.I.1987/1118	The Protected Rights (Transfer Payment) Regulations 1987	The whole of the Regulations
S.I. 1994/1062	The Occupational and Personal Pension Schemes (Consequential Amendments) Regulations 1994	Schedule 2, paragraph 20
S.I. 1994/1751	The Protected Rights (Transfer Payment) Amendment Regulations 1994	The whole of the Regulations

SCHEDULE 2

Regulation 7

TRANSITIONAL PROVISIONS

In a case such as is mentioned in regulation 7(3), the Protected Rights (Transfer Payment) Regulations 1987 are modified as follows:

- (a) all references to the Occupational Pensions Board are replaced by references to the Secretary of State;
- (b) the definition of “overseas scheme” is replaced by the definition of “overseas scheme” in these Regulations; and
- (c) the definition of “section 53 money purchase scheme” is replaced by the definition ““section 53 money purchase scheme” means a scheme which was formerly a money purchase contracted-out scheme and in respect of which section 53 applies” and the definition of “section 53 salary related scheme” is replaced by the definition ““section 53 salary related scheme” means a scheme which was formerly a salary related contracted-out scheme and in respect of which section 53 applies”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Protected Rights (Transfer Payment) Regulations 1987 which are now (subject to transitional provisions) revoked. The Regulations supplement the changes introduced by the Pensions Act 1995 to Part III of the Pension Schemes Act 1993 (although they are made under powers in the 1993 Act which have not been amended by the 1995 Act). They also consolidate and amend those provisions of the 1987 Regulations which remain relevant. As regards those regulations

Status: *This is the original version (as it was originally made).*

which are not made only for the purposes of consolidation, the Occupational Pensions Board has agreed that proposals to make such regulations need not be referred to them.

Regulation 1 contains general provisions relating to citation, commencement and interpretation.

Regulations 2 to 5 make provision for the circumstances in which and the conditions subject to which effect may be given to the protected rights of a member of a scheme which is or was a money purchase contracted-out scheme or an appropriate personal pension scheme by the making of a transfer payment to another pension scheme.

Regulation 6 modifies Part III of the 1993 Act, where a transfer payment has been made to a scheme which is contracted-out under section 9(2) of that Act (a salary-related contracted-out scheme), in order to accommodate the guaranteed minimum pensions to which a member of such a scheme becomes entitled in consequence of that payment.

Regulation 7 contains revocations and transitional provisions.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including these Regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Private Pensions Directorate, 11th floor, The Adelphi, 1-11 John Adam Street, London, WC2N 6HT.